IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 17036 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GEETABEN MUKESHBHAI GAPATBHAI RANA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 17036 of 2003

MR MM TIRMIZI for Petitioner No. 1

MS MITA S PANCHAL AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 28/04/2004

ORAL JUDGEMENT

The petitioner above named has preferred this

petition under Article 226 of the Constitution of India for appropriate writ, order or direction, for quashing and setting aside an order of detention dated 24/11/03 passed by respondent no.2 herein, in exercise of the powers u/s.3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (for short, "the said Act").

2. It was alleged against the petitioner that one F.I.R. was registered against him before Northern Division Police Station at C.R.No.1529/2003 on 06/10/03 for offences punishable u/s.66, 65 & 81 of the Bombay Prohibition Act, 1949. It was also alleged against the petitioner that two witnesses had given statements against the petitioner saying that he was engaged in bootlegging activities.

3. On the strength of the aforesaid one registered offence and two statements of unnamed witnesses, the detaining authority found that the petitioner is required to be detained, with a view to prevent him from indulging in bootlegging activities, which amounted to a threat to public order, and accordingly, the impugned order of detention was passed against the petitioner.

4. Feeling aggrieved by the said order of his detention, the petitioner has preferred this petition before this Court. It has been contended here that on a mere fact that one offence was registered, it could not be said that the petitioner was a habitual offender. It has also been contended that the names of the witnesses were not disclosed to the petitioner, and therefore, the valuable right of the petitioner to make an effective representation against his detention has been denied. That, therefore, the order of detention is illegal and hence, it may be quashed and set aside.

5. On receipt of the petition, Rule was issued and in response to the service of notice of Rule, Ms.Mita S Panchal learned AGP has appeared on behalf of the respondents. I have heard the learned advocates for the parties and have perused the papers.

6. At the final hearing, the learned advocate for the petitioner has argued that on a mere registration of a single prohibition offence against the petitioner, the petitioner could not be treated to be a habitual offender. It is well settled that while branding a person as "bootlegger", there should be material before the detaining authority to show that the said person is a habitual offender. In the present case, we find that there was no material with the detaining authority to

come to the aforesaid conclusion, and therefore, it was difficult to brand the petitioner as a "bootlegger". Therefore, the order of detention cannot be sustained on this consideration. Even otherwise, on a mere registration of a solitary prohibition offence against the petitioner, it could not be said that the activities of the petitioner would lead to a threat to public order or public health. Therefore also, the order of detention cannot be sustained.

7. For the foregoing reason, this petition is allowed. The impugned order of detention dated 24/11/03 passed by respondent no.2 against the petitioner, is ordered to be quashed and set aside. Detenu, Gitaben W/o. Mukeshbhai Ganpatbhai Rana, is ordered to be set at liberty forthwith, if no longer required in any other case. Rule is made absolute with no order as to costs. Direct service permitted.

(D. P. Buch, J.)

pravin/